

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PIERCE LANDRUM GROCE,

No. C 08-00966 SBA (PR)

Petitioner,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

v.

CALIFORNIA BOARD OF CORRECTIONS
BOARD OF PRISON TERMS, et al.,

Respondents.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the full filing fee. He has requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or

1 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
2 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
3 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
4 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
5 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
6 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
7 Cir. 1965).

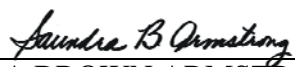
8 At this early stage of the proceedings the Court is unable to determine whether the
9 appointment of counsel is mandated for Petitioner. Accordingly, the interests of justice do not
10 require appointment of counsel at this time, and Petitioner's request (docket no. 6) is DENIED. This
11 denial is without prejudice to the Court's sua sponte reconsideration should the Court find an
12 evidentiary hearing necessary following consideration of the merits of Petitioner's claims.

13 Petitioner's application to proceed in forma pauperis (docket no. 5) is DENIED as moot. As
14 mentioned above, Petitioner has paid the requisite filing fee. The Court will review Petitioner's
15 habeas petition in a separate written Order.

16 This Order terminates Docket nos. 5 and 6.

17 IT IS SO ORDERED.

18 Dated: 5/15/08

19 
20 SAUNDRA BROWN ARMSTRONG
21 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 PIERCE L GROCE,

5 Plaintiff,

6 v.

7 CALIFORNIA DEPT OF CORRECTIONS et
8 al,

9 Defendant.

Case Number: CV08-00966 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on May 16, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Pierce Landrum Groce P05958
17 Corcoran State Prison - C.S.A.T.F.
18 P.O. Box 5248
19 Corcoran, CA 93212

20 Dated: May 16, 2008

21 Richard W. Wieking, Clerk
22 By: LISA R CLARK, Deputy Clerk
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